

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

KARDOES RUBBER COMPANY, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO. 3:09-cv-761
FRANKLIN INDUSTRIAL MATERIALS and)	
FRANKLIN INDUSTRIES, INC.,)	
)	
Defendants ¹ .)	

DEFENDANTS' MOTION TO COMPEL DISCOVERY

Defendants Franklin Industries, Inc. and Franklin Industrial Materials, pursuant to Rule 37(a) of the *Federal Rules of Civil Procedure*, move this Court for an Order compelling Plaintiff Kardoes Rubber Company, Inc. to immediately respond, within the next ten (10) days, to *Defendants' First Consolidated Interrogatories, Requests for Production and Request for Inspection to Plaintiff*, and in support of this Motion states as follows:

1. On March 15, 2010, Defendants served their *First Consolidated Interrogatories, Requests for Production and Request for Inspection* on Plaintiff. A copy of the same is attached hereto as Exhibit "A". No response was received from Plaintiff to these discovery requests within thirty (30) days of service.

2. On April 16, 2010, counsel for Defendants wrote Plaintiff's counsel requesting a voluntary response to Defendants' discovery within ten (10) days. A copy of the letter is attached hereto as Exhibit "B".

¹ Franklin Industrial Materials is a trade name and not a proper defendant.

3. On or about April 28, 2010, counsel for Defendants and Plaintiff's counsel had a telephone conversation wherein Plaintiff's counsel indicated that responses to Franklin's discovery requests would be provided by the end of the following week.

4. To date, Plaintiff has failed to respond to Defendants' discovery.

5. The information requested in *Defendants' First Consolidated Interrogatories, Requests for Production and Request for Inspection* is necessary for the proper defense and timely resolution of this action.

6. Undersigned counsel certifies that before filing this motion, Defendants' counsel has endeavored in good faith to resolve this discovery dispute without involving the Court.

WHEREFORE, premises considered, Defendants respectfully request the Court enter an Order compelling Plaintiff to respond to *Defendants' First Consolidated Interrogatories, Requests for Production and Request for Inspection* within the next ten (10) days.

/s/ Joseph Seawell Moore

One of the Attorneys for Defendants, Franklin Industries, Inc. and Franklin Industrial Materials

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing and/or that a copy of the foregoing has been served upon the following by placing a copy of same in the United States mail, properly addressed and postage prepaid, on this the 11th day of May, 2010:

Susan J. Walker
Waldrep, Stewart & Kendrick, LLC
2323 Second Avenue North
Birmingham, Alabama 35203

/s/ Joseph Seawell Moore
Of Counsel